

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-315-T - ORDER NO. 2004-149

MAY 6, 2004

IN RE: Application of Arrow Van Lines, Inc., 200A ) ORDER GRANTING  
Purrysburg Road, Hardeeville, SC 29927 for a ) CLASS E CERTIFICATE  
Class E (HHG) Certificate of Public )  
Convenience and Necessity )

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Application of Arrow Van Lines, Inc. ("Arrow" or the "Applicant"), 200A Purrysburg Road, Hardeeville, SC 29927. This Application was initially received by the Commission as a request for authority by the Applicant to transport household goods between points and places in South Carolina. The Application was subsequently amended to request a Class E Certificate of Public Convenience and Necessity to transport household goods as follows:

Household Goods, As Defined in R. 103-210(1):  
Between points and places in Beaufort, Colleton, Hampton, and Jasper Counties and from points and places in Beaufort, Colleton, Hampton, and Jasper Counties to points and places in South Carolina and from points and places in South Carolina to points and places in Beaufort, Colleton, Hampton, and Jasper Counties.

The Commission's Executive Director instructed the Applicant to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing instructed the public as to how to file pleadings to participate in the proceedings on the Application and was duly published by the Applicant. Petitions to Intervene were received from the following parties contesting the Application: Carey

Moving and Storage, Inc., Cary Moving and Storage of Greenville, Inc., and Carey Moving and Storage of Charlotte, Inc. (collectively, “Carey”), Kohler Moving and Storage, Inc. (“Kohler”), Apartment Movers, etc. (“AME”), Dale J. Cook Moving & Storage, Inc. (“Cook”), and Atlantic Transfer & Storage, Inc. (“Atlantic”).

**APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2001) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2001) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2001) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2001) defines "Certificate of PC&N" as
- the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2001) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

---

<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

8. A “Class E Motor Carrier” is defined in 26 S.C. Regs. 103-114 (Supp. 2001) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2001) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.<sup>2</sup> If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending

---

<sup>2</sup> By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2001) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

#### **EVIDENCE OF RECORD**

A hearing was held on February 25, 2004, at 2:30 PM in the offices of the Commission. The Honorable Mignon Clyburn, Chair, presided. Mills L. Morrison, Jr., Esquire, appeared representing the Applicant Arrow. None of the intervenors appeared or were represented at the hearing in this case. The Commission Staff was represented by

F. David Butler, General Counsel. The Staff presented the testimony of L. George Parker, Jr., Manager of the Transportation Department.

Henry C. Smith, Hal Jones, Bill Tamiso, and Mark Snyder appeared and testified on behalf of the Applicant Arrow. Mr. Smith is the owner of Arrow. He testified that the Company was established in 1946 and is based in Savannah, Georgia. The Applicant holds authority to move household goods in the State of Georgia (under GPSC #324) and interstate authority under ICC MC 120392. Arrow works as a representative of the Bekins moving company for the remainder of its interstate work. Arrow owns a 92,000 square foot warehouse facility in Savannah and has recently built a 40,000 square foot facility in Jasper County, South Carolina. The company owns and operates eight large tractor trailer trucks and one van for moving household goods. Mr. Smith testified that if permitted by this Commission that Arrow would be the only such licensed business in Jasper County.

Mr. Snyder works as a realtor in Hardeeville, South Carolina and testified on behalf of the Applicant. Mr. Snyder testified that due to the lack of a licensed household mover in Jasper County that it is often difficult, if not impossible, to locate a licensed mover for those purchasing or selling houses in Jasper County. He further testified that he recently could not find a company to move household goods from Walterboro to Jasper County.

Mr. Hal Jones works as the Director of Planning and Building Services for Jasper County and also testified on behalf of the Applicant. Mr. Jones stated that Jasper County had recruited the Applicant to build its new 40,000 square foot facility there. Mr. Jones

also presented to the Commission a resolution from the Jasper County Council supporting the Application of Arrow for a Class E Permit. Mr. Jones stated that Arrow had already invested an estimated One and One-Half Million dollars in its new facility in Jasper County.

Mr. Bill Tamiso, owner of a real estate agency in Bluffton (Beaufort County), also testified on behalf of the Applicant. Mr. Tamiso testified that Jasper County needed a licensed household mover such as the Applicant to aid in the recruitment of other businesses and residents to Jasper County. He stated that the Jasper County Chamber of Commerce strongly supported the Application of Arrow.

L. George Parker, Manager of the Commission's Transportation Department, also testified. Parker noted that he visited the Arrow place of business and inspected both the warehouse facility and the Applicant's vehicles. Mr. Parker took pictures of the facilities and equipment and verified that the equipment, including the trucks, were in acceptable condition. Mr. Parker testified that the warehouse facility was a new facility built by the Applicant. Mr. Parker testified that based on his inspection that the Applicant appeared fit, willing, and able to move household goods.

S.C. Code Ann. 58-23-590(C )(Supp. 2003) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of the chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity. We would note that we have

waived the “shipper witness” rule to show public convenience and necessity found in 26 S.C. Code Regs. 103-133 (Supp. 2003) for applicants seeking authority in three contiguous counties. In the present case, the Applicant is seeking limited authority but over an area larger than three contiguous counties. We find that the witnesses presented on behalf of the Applicant, in particular the testimony of Mr. Mark Snyder, clearly established that the public convenience and necessity warrant the issuance of the permit requested by the Applicant in the Jasper, Hampton, Beaufort, and Colleton County area of South Carolina. We find the public convenience and necessity evidence provided by the Applicant to be credible.

#### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Arrow, desires to provide moving services of household goods within and between points and places in Beaufort, Colleton, Hampton, and Jasper Counties, South Carolina and from points and places in those four counties listed to points in South Carolina and from points in South Carolina to points and places within those four listed counties.

2. The Applicant, Arrow, is fit, willing, and able to provide and properly perform the services which it seeks to provide. “Fitness” has been demonstrated by (1) evidence of an acceptable safety rating, (2) that there are no outstanding judgments pending against Arrow, and (3) that Arrow will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the record



contains (1) a certification that Arrow, through its principals, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against Arrow. “Able” was demonstrated by the evidence of record which reveals that Arrow has been in business since 1946 and that Arrow currently operates intrastate within the State of Georgia pursuant to authority from the Georgia Public Service Commission and interstate pursuant to authority from federal agencies. The evidence indicates that Arrow possesses the financial wherewithal necessary to conduct for-hire motor carrier operations in South Carolina. Further, the record shows that Arrow possesses the requisite minimum insurance as required by this Commission. “Willingness” was demonstrated by the filing of the Application and the testimony of Mr. Smith indicating the Applicant’s desire to undertake this business venture in South Carolina.

3. The services proposed by Arrow are required by the public convenience and necessity. We find that the witnesses presented on behalf of the Applicant, in particular the testimony of Mr. Mark Snyder, clearly established that the public convenience and necessity warrant the issuance of the permit requested by the Applicant in the Jasper, Hampton, Beaufort, and Colleton County area of South Carolina. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that Arrow has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that Arrow has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which Arrow proposes to serve requires the services proposed by the Application.

3. Based on the conclusions above, that Arrow has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that Arrow should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):  
Between points and places in Beaufort, Colleton, Hampton, and Jasper Counties and from points and places in Beaufort, Colleton, Hampton, and Jasper Counties to points and places in South Carolina and from points and places in South Carolina to points and places in Beaufort, Colleton, Hampton, and Jasper Counties.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Arrow Van Lines, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Beaufort, Colleton, Hampton, and Jasper

Counties and from points and places in Beaufort, Colleton, Hampton, and Jasper Counties to points and places in South Carolina and from points and places in South Carolina to points and places in Beaufort, Colleton, Hampton, and Jasper Counties.

2. Arrow Van Lines, Inc. shall file the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through R. 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to Arrow Van Lines, Inc. authorizing the motor carrier services granted herein.

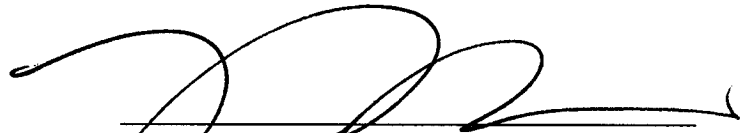
4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance, and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission

additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
Mignon L. Clyburn, Chairman

ATTEST:

  
\_\_\_\_\_  
Bruce F. Duke, Executive Director

(SEAL)